



STATE OF VERMONT
LEGISLATIVE JOINT FISCAL COMMITTEE

Tuesday, July 23, 2013

Minutes subject to approval

Members present: Representatives Branagan, Heath, Johnson, and Sharpe, and Senators Ancel, Ashe, Campbell, Kitchel, Sears, and Snelling.

Other Attendees: Administration, Joint Fiscal Office, and Legislative Council staff, and various media, lobbyists, advocacy groups, and members of the public.

The Chair, Representative Heath, called the meeting to order at 9:30 a.m. Senator Kitchel made a motion to accept the minutes of November 15, 2012 and February 6, 2013, with a correction to the November minutes, and Senator Snelling seconded the motion. The Committee adopted both sets of minutes with corrections.

A. Agency of Natural Resources (ANR) Request: [10 V.S.A. § 1283(b)] - Approval of Expenditure from the Environmental Contingency Fund (ECF) (\$1,207,000.00) for the Fillipo Dry Cleaners site in Rutland

Alyssa Schuren, Deputy Commissioner, and George Desch, Director of the Waste Management Division, Department of Environmental Conservation, distributed a handout and explained that the ECF is funded through a tax on the disposal of hazardous waste from businesses. She stated the current balance of the fund was \$2,347,010.00, receipts for 2012 were \$362,620.00, and expenditures were \$262,685.00. Ms. Schuren explained that the agency was requesting to draw down \$1,207,000.00 from the ECF to remediate the Fillipo Dry Cleaners site because of an imminent threat to a residential neighborhood's drinking water.

Mr. Desch responded to Senator Sears that the Fillipo Dry Cleaners site had not been filed as a Super Fund site because there was a responsible party for the site that the agency received a favorable decision against from the Environmental Court to recoup costs. He added that the responsible party did not have the resources to pay the costs of the remediation but the agency is able to seek assistance from the Attorney General's Office to recoup costs through other potential sources of funding, such as insurance. Representative Heath asked if the State would own the property after the site cleanup or would the State have the ability to demand the owner sell the property to return some of the costs to the State associated with the remediation. Mr. Desch replied that the State has a lien on the property through the decision of the Environmental Court and would be able to recoup some of the costs if the property was sold by the owner. Senator Kitchel asked for clarification on whether the option of declaring the site a Super Fund site was no longer an option. Mr. Desch explained that was still an option but with all the demand on the federal government for Super Fund declarations and funding, the response would not be fast enough to contain the water contamination issue.

Senator Campbell asked if the current owner had assets sufficient to repay the State for the cleanup. Ms. Schuren stated that the owner did have many assets. Representative Heath requested that the Department continue to keep the Committee apprised through written form [memorandums]. Senator Ashe queried what the law was in regard to compelling the owner to use its current assets to pay for cleanup, and at what point was the State bound to remediate for the owner. Ms. Schuren responded that the current owner of the dry cleaners is not the one who created the problem which adds complexity to the issue. Senator Ashe commented that some of the statutory language around the fund's use was a little vague, and asked if it was adequate for the Department to recoup costs or enforce remediation. The Chair suggested that the Department review the statutory language around the fund and enforcement ability of the agency and return to the Legislature if it had proposed changes to the language. Senator Campbell asked that a copy of the decision on the case of the Fillipo Dry Cleaners be sent to him.

Senator Sears showed concern for the State's paying for the remediation of the site and the new owner possibly making a profit from that investment. Representative Ancel asked if the Department could discuss with the Attorney General's Office whether the State should consider an appeal. Senator Campbell echoed the same sentiment and that if the decision stood as it did now, it could set a precedent for other remediation sites. Representative Ancel suggested that the Department seek advice from the Attorney General's Office on whether an appeal could go forward while the Department continues to remediate the site. Furthermore, what would the consequences be to the State from future cases if the decision stood?

Senator Campbell reiterated his concerns for the decision of Fillipo Dry Cleaners, and strongly recommended that the Department file an appeal before the window of time set forth by the court closed. He added that unless there was a special reason for the court's ruling, the case if allowed to stand could set precedence for all other remediation cases in Vermont. The Chair directed the Department to discuss the case further with its legal counsel and return to the Committee with any additional information later in the meeting.

The Chair, later in the meeting, returned to the Department of Environmental Conservation's testimony on agenda item B. Approval of Expenditure from the Environmental Contingency Fund (\$1,207,000.00) for the Fillipo Dry Cleaners site in Rutland. Senator Campbell stated that after reviewing further information from the Department, he concedes that they are proceeding accordingly. Matt Chapman, General Counsel, Department of Environmental Conservation, stated the Department will pursue other avenues of recovery for the remediation costs. He added that the Department brought an action against the original property owner and was successful with that filing. Therefore, that owner was in contempt for not complying with the court order and was still obligated for the costs. He confirmed that the Department was able to remediate the land while pursuing other avenues to collect the costs. Senator Campbell moved to approve the expenditure with the caveat that the Department continue its efforts to regain the costs of the remediation. The Committee approved the motion with the dissenting vote of Senator Sears.

B. Administration's Fiscal Updates – 1. Unencumbered Balances [Sec. 55(a)(2) of Act 1 of 2013]

Dave Cameron, Administrative Services Director, Department of Financial Regulation, distributed a memo and announced that there was \$20.7 million in Insurance and Securities Regulatory Fund receipts available to the General Fund. Senator Ashe asked what the target had been for the FY 2014 budget. Mr. Cameron responded \$17 million. The Committee thanked Mr. Cameron for the welcome news. Senator Ashe inquired where the additional revenues would be transferred. Senator Kitchel explained that the excess revenues would accrue to the General Fund and be deposited into the Reserve or Rainy Day Fund.

2. FY2013 Preliminary Closeout

James Reardon, Commissioner, Department of Finance & Management, distributed information, and stated that the General Fund closed out at \$26.1 million more in FY 2013 than estimated, which was mostly due to larger personal income tax receipts than anticipated. He then summarized the contents of the handout. Senator Ashe asked at what point unclaimed property became a direct application or a receipt for the State. Jeb Spaulding, Secretary, Agency of Administration, replied that an individual never loses the right to claim property, but there was an estimated 40% of people that never claimed their property. The State had an annual process to account for the excess funds through a true up to balance its books. Senator Ashe further queried whether there was an unfunded liability that always hung upon the State if a person claimed property. Secretary Spaulding agreed there was a State liability for unclaimed property. Commissioner Reardon stated the full report, including the State's liability, resided in the Comprehensive Annual Financial Report (CAFR).

Commissioner Reardon continued his summary of the handout. Representative Sharpe inquired when the Supplemental Property Tax Refund (SPTR) would be directly transferred to the Education Fund. Commissioner Reardon replied that it would be governed by action in the FY 2015 legislative session. The Legislature has to make the determination of the use of the funds. Representative Heath explained that legislation required that in FY 2014, 25% of the SPTR would transfer to the Education Fund. Mr. Klein read the statutory language on how all the funds are distributed.

Commissioner Reardon added that there was \$2.6 million in unspent General Fund dollars from Choices for Care that would need to be reallocated through the FY 2014 BAA process. He suggested the Legislature utilize the additional funds for one-time costs. Representative Heath commented that the Legislature allowed for the Joint Fiscal Committee to receive Sequestration budget gap needs, and she anticipated there would be some from the Department of Aging, Disabilities, and Independent Living at the September meeting.

3. Vermont Veterans' Home Update

Jeb Spaulding, Secretary, Agency of Administration, gave an update on the Vermont Veterans' Home (VVH). He explained that the VVH continued to have an operating deficit and that was not expected to change in the next year. Compounding the issue is the uncertainty of whether the VVH would receive recertification from CMS because of failed federal inspections. The repercussion of not being recertified was an annual cost of \$12 million.

Secretary Spaulding announced that the independent study of VVH requested by the Legislature, due in November, should be completed in a couple of weeks. Possible recommendations included in the report were changes in management, and thoughts on increasing the census. A new Deputy Director hired recently at the VVH had begun some positive momentum with the issues between the staff and management.

Commissioner Reardon explained the VVH had a \$21.5 million budget. Of that amount, \$1.3 million was inserted into the FY 2014 budget for anticipated deficit allowance, and the VVH may request \$2 million more in the FY 2014 BAA. If the VVH lost its recertification {9/26}, the State would need approximately \$7.1 million of General Funds, plus the current deficit of \$2 million, to fill the budget gap of the VVH. The total amount to fill the federal funding gap would be an estimated \$11.4 million annually.

Secretary Spaulding stated that a contingency plan was being created for clients by the Department of Disabilities, Aging and Independent Living if recertification did not occur. He added that the independent study report had recommendations to create statutory changes to the VVH due to inconsistencies. Senator Ashe asked who was eligible to be a resident at the VVH. Secretary Spaulding replied that the person should either be a veteran or related to one. Senator Campbell queried if the average pay to staff was higher than other nursing home facilities in the State. Secretary Spaulding stated the staff pay and benefits were higher than the average nursing home, and unlike all the other facilities of this type, there were no part-time employees. He added that except for the Deputy Administrator and the Administrator, all staff are classified State employees. Senator Sears showed concern for 240 jobs at the VVH if recertification did not occur. Representative Heath requested that the Administration deliver the report of the independent study to the Committee as soon as it was available. Secretary Spaulding offered an early presentation of the report to the Committee and others in August. Representative Heath stated the Committee would consider calling a special committee meeting in August. She suggested that the Administration talk with the Senate Pro Tempore and Speaker of the House to decide what other legislators should be included in the presentation.

4. Tropical Storm Irene – a. Payments to Municipalities [Sec. 77a(b) of Act 75 of 2012]

Commissioner Reardon and Aimee Pope, Fiscal Analyst, Department of Finance & Management, distributed a revised cover sheet to the report and summarized its contents.

b. Agency Reporting and Oversight [Sec. E.100.1 of Act 50 of 2013]

Commissioner Reardon summarized the report. He stated that the majority of the project worksheets had been completed, and currently there were sufficient funds in the Emergency Relief Assistance Fund (ERAF). Senator Ashe inquired whether an audit of the FEMA funds awarded to date had been performed. Commissioner Reardon replied that the FY 2012 statewide audit had been done. Representative Heath commented that some federal auditors have returned several years later even after audits. Commissioner Reardon agreed that the State was always subject to federal audits after receiving FEMA funding. Senator Ashe asked the Administration for a summary of audit findings on State funds for all the flooding incidents. Commissioner Reardon agreed to provide the summary. Senator Sears asked if communities other than Bennington were appealing decisions on

FEMA funding and whether the State was assisting in those appeals. Secretary Spaulding deferred to the next witness on the agenda, Mr. Flynn.

c. Update on 2013 Flooding

Joe Flynn, Director of Vermont Emergency Management, Department of Public Safety, responded to Senator Sears' earlier question that the office was working hard to assist municipalities with their appeals. In some cases, appeals were not appealable, and, therefore the Department was working on informing them of their standing. Mr. Flynn distributed a handout on the 2013 flooding, and explained that there was still an outstanding bill for Agency of Transportation's storm assistance to Massachusetts for \$238,000.00. There was another outstanding bill for Vermont State Police storm assistance to New Jersey for \$59,000.00.

Mr. Flynn reviewed the contents of the handout of the 2013 Flooding in Vermont with the Committee. [Note: CD did not record] Representative Sharpe asked if anyone, including a business could apply for FEMA assistance. Mr. Flynn answered yes, as long as the municipality was the actual applicant for the business or person.

C. Waterbury Complex Update

Michael Obuchowski, Commissioner, and Mike Stevens, Special Project Administrator, Department of Buildings and General Services (BGS), distributed two handouts and summarized the contents. BGS expects to clarify federal funds before September. Representative Heath requested that the Commissioner provide an update at the Committee's September meeting.

D.Low Income Heating & Energy Assistance Program (LIHEAP) Update

Leo Clark, Chief Fiscal Officer, Department for Children & Families, distributed a handout and stated that the federal funding to LIHEAP was down to 2008 levels. Representative Ancel asked if the Department had reliable projections for the costs of oil and gas this upcoming heating season. Mr. Klein noted that the Administration was working on reaching a deal with the fuel suppliers on a discounted amount. Senator Ashe queried how the 20% discount from utilities through the Department of Public Service would factor into the price equation. Mr. Clark stated he would get that information. Representative Heath requested an update in September on where the Department was in terms of the reduction in the cost of fuel for the program.

E.. Grants – 1. Office of Child Support – Web Portal Fee [JFO#2625] [22 V.S.A. § 953(c)(2)]

Roberta Garrand, Child Support Administration, Department for Children & Families, Jeff Cohen, OCS Director, Robert Swartz from Vermont Information Consortium, and Harry Bell, Directory of Web Services, Department of Information & Innovation, summarized the grant request. After a brief Committee discussion on the fee request, Representative Heath moved the grant request and Senator Kitchel seconded it. The Committee approved the request with two dissenting votes from Representatives Ancel and Branagan.

2. JFO #2631 – Approval of FEMA Grant.

Commissioner Reardon explained the grant request was to receive federal assistance from damage to three counties during the 2013 Spring Flooding. Senator Kitchel moved to approve the grant and Senator Sears seconded. The Committee approved the grant.

3. Exchange [32 V.S.A. § 5(a)] - JFO #2632 - Approval of Health Benefits Exchange grant and positions, and JFO #2633 - Approval of 2 Limited Service Positions associated with JFO#2582 (Health Benefits Exchange)

Mark Larson, Commissioner, Department of Vermont Health Access, distributed a handout, and summarized the grant request. Representative Sharpe asked if the grant was built on models similar to other states. Mr. Larson replied that there were some limitations because of timing but the different states were learning from each other. Senator Campbell showed concerns for the creation of limited service positions and then not phasing out those positions once their contracts expired. Representative Ancel inquired if the grant had an impact on the projected \$18 million budget of health care. Mr. Larson replied that he was not expecting a difference due to the addition of the positions. Senator Ashe queried on what the implications would be if the Committee did not approve the grant. Mr. Larson explained that the Department could have a timing issue for the next steps in the Exchange. Senator Sears moved to approve both grants and Representative Branagan seconded the motion. Concerns were raised by Senator Kitchel and Senator Campbell on the costs associated with the Exchange. Representative Ancel stated she was uncomfortable because of how the funding traveled through the grant process. Representative Johnson commented that the new health system had enabled the replacement of antiquated computer systems that the State had ignored over the years, and she understood some big fluctuations in costs associated with those repairs. Senator Ashe asked if there were State funds associated with the grants. Mr. Larson replied that those matching State funds had already been appropriated. The Chair reminded the Committee of the motion on the floor for approval of the two grants. The Committee approved the grants with a dissenting vote from Senator Snelling.

The Chair suggested some modifications to the agenda, and the Committee decided to push some of the contents of the agenda into an August 8 special meeting that included an update on the Vermont Veterans' Home.

F. Developmental Services Estimate [Sec. E.333(a)(1) of Act 50 of 2013]

Stephanie Barrett, Associate Fiscal Officer, Nolan Langweil, Senior Fiscal Analyst, Joint Fiscal Office, Emily Byrne, Fiscal Analyst, Department of Finance & Management, and Bill Kelly, Department of Aging, Disabilities, and Independent Living, distributed a handout and Ms. Barrett summarized the Developmental Services FY 2014 budget savings target. Ms. Barrett explained that based on the annualized projection of approved equity and public safety requests made in FY 2013, the projected savings target of \$2.5 million included in the FY 2014 budget is updated to \$2.23 million.

G. Revenue Update

Tom Kavet, Legislature's Economist, distributed the July 2013 Economic Review and Revenue Forecast Update and summarized its contents. Senator Sears asked if there was an estimate of what Vermont was losing in Internet taxes. Ms. Teachout stated it was about \$40 million annually. Congressional action would allow the recovery of a portion of this lost revenue. Senator Sears asked how much that loss was growing each year. Ms. Teachout agreed to get that estimate. Mr. Kavet added that the JFO and he were working with the Department of Taxes to break out Sales and Use Tax by type of store to show the store types that were more vulnerable to Internet sales than other businesses. Representative Branagan asked to have Mr. Kavet estimate what the reserve should be to

address any sudden drops in revenue. Mr. Kavet stated he could give different scenarios to choose from depending on how much of a buffer the Legislature felt appropriate.

H. Fiscal Office Updates – Fiscal Officer’s Report - Memorandum of Understanding (MOU) between the Tax Dept. and JFO [Sec. 6 of Act 73 of 2013]

Mr. Klein and Sara Teachout, Senior Fiscal Analyst, Joint Fiscal Office, distributed his fiscal officers’ report, and explained the MOU was a work in progress. He added that there was mutual consideration to move ahead with all the components except the sharing of the data, which may be postponed until after October 5 in order to gather information from outside vendors that could securely house and limit the transfer of the data between the two offices. Ms Teachout stated that the Department of Taxes had requested that an outside vendor develop an approach to provide secure information to the JFO. Mr. Klein commented that blurring the data made the integrity of the data questionable. Ms. Teachout stated that the Department of Taxes would like JFO to use an income tax model that may be expensive to complete. Mr. Klein added that the fiscal office in Connecticut has a contract with a vendor for a model, and it is something the JFO is exploring.

The Chair confirmed that the Committee would next meet at 2:00 p.m. on August 8 for a Special Committee meeting.

The Committee adjourned at 12:50 p.m.

Respectfully Submitted,

Theresa Utton-Jerman
Legislative Joint Fiscal Office